

PLR 8616067, 1986 WL 368489 (IRS PLR)

Internal Revenue Service (I.R.S.)

Private Letter Ruling

January 22, 1986

Section 61 -- Gross Income v. Not Gross Income  
61.00-00 Gross Income v. Not Gross Income

Section 3121 -- Definitions  
3121.00-00 Definitions  
3121.04-00 Employees  
3121.04-08 Building Contractors

Section 3306 -- Definitions  
3306.00-00 Definitions  
3306.03-00 Employment

Section 3401 -- Definitions  
3401.00-00 Definitions  
3401.04-00 Employer-Employee Relationship  
3401.04-02 Employee v. Not an Employee

CC: IND: I: 1: 3

KEY:

Training Program = \* \* \*

Trust = \* \* \*

Dear \* \* \*

This is in response to a request for rulings submitted on behalf of the Trust by its authorized representatives. Rulings have been requested as to whether amounts paid to carpenter apprentices under the Training Program are includible in the apprentices' gross incomes, and if so, whether such payments are 'wages' subject to the federal employment taxes.

According to the facts submitted, the Training Program was established pursuant to collective bargaining agreements between representatives of labor and management in the State's building and construction industry. The goal of the training program is to provide individuals entering the carpentry trade with pre-apprentice training and to upgrade the existing skills of carpenter-apprentices.

Under the collective bargaining agreements a Trust was established to administer the Training Program. The Trust is governed by a board of trustees composed of an equal number of employer and union representatives. Under the agreements, employers of union carpenters are required to contribute 10 cents for each hour worked by a union carpenter for the employer to the Trust in order to fund the Training Program. No contributor has any vested interest in the Trust assets. It is represented that the Trust is exempt from tax under [section 501\(a\) of the Internal Revenue Code](#) as an organization described in [section 501\(c\)\(3\)](#).

For apprentices in unions covered by the collective bargaining agreements there is no tuition charge for attending the Training Program. In addition, these apprentices receive weekly stipends from the Trust intended to help them defray their living expenses. The amount of the stipend is determined by the board of trustees, and it is represented that the amount of the stipend is not related to the hourly wage rate paid to the apprentices

by the contractors.

When an individual becomes a union carpenter-apprentice he or she enters into an indenture agreement with a local joint apprentice committee (JAC) composed of union and contractor representatives. The JAC is responsible for placing apprentices in employment with the various contractors. The indenture agreement requires the individual to complete four years of apprenticeship including 160 hours a year of training in a state approved program. This requirement is satisfied through attendance at the Training Program for 2 periods of two consecutive weeks each year. The JAC determines when an individual must report for his or her training.

Pursuant to the collective bargaining agreements, when an apprentice reports for training, his or her employment with a particular contractor ceases. The contractor does not pay any wages or fringe benefits to an apprentice in training and is not obligated to rehire an apprentice at the completion of a training period.

[Section 61\(a\) of the Internal Revenue Code](#), and the regulations thereunder, provide that gross income means all income from whatever source derived, unless excluded by law. In [Commissioner v. Glenshaw Glass Co., 348 U.S. 426 \(1955\)](#), [1955-1 C.B. 207](#), the Supreme Court of the United States defined the term 'gross income', as used in the Internal Revenue Code, to include all accessions to wealth that are clearly realized and over which the taxpayer has complete dominion.

Section 117 of the Code provides that gross income does not include any amount received as a scholarship or fellowship grant. In the case of an individual who is not a candidate for a degree, the exclusion applies only to scholarships or fellowships granted by an organization described in Code section 117(b)(2)(A), which includes, among others, organizations described in [section 501\(c\)\(3\)](#) that are exempt from tax under [section 501\(a\)](#).

[Revenue Ruling 77-177, 1977-1 C.B. 34](#), considers the application of section 117 of the Code in a situation similar to the present case. The ruling concerns allowances paid to persons enrolled in a construction training program. The program was created by collective bargaining agreements between construction contractors and certain labor unions. The program was funded by contractor contributions to a trust described in [section 501\(c\)\(3\)](#) of the Code.

The ruling states that, because the trust selected the recipients, and the contractors and the labor unions selected the type of training which must be pursued, all three (the trust, the contractors, and the unions) are considered as grantors for the purposes of section 117 of the Code. Where there is more than one grantor, all grantors must qualify as organizations described in section 117(b)(2)(A). Accordingly, the Service ruled the allowances are not excludable under section 117 because the contractors and the unions do not qualify under section 117(b)(2)(A).

Section 127 of the Code provides an exclusion from gross income for amounts paid or expenses incurred by an employer for educational assistance provided to an employee if furnished pursuant to an educational assistance program. Section 127(c)(1)(B) provides that the term 'educational assistance' does not include payments for meals, lodging, or transportation.

Section 3121(a) of the Code, relating to the Federal Insurance Contributions Act (FICA), and section 3306(b), relating to the Federal Unemployment Tax Act (FUTA), provide that the term 'wages' means all remuneration for employment, with certain exceptions not relevant here. Section 3401(a), relating to income tax withholding, contains a similar definition.

Sections 3121(b) and 3306(c) of the Code define 'employment' as services performed by an employee for the person employing him. Sections 3121(d) and 3306(i) of the Code define 'employee' as including an individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Guides for determining the existence of employee status are found in sections 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1 of the Employment Tax Regulations.

[Revenue Ruling 69-519, 1969-2 C.B. 185](#), considers the employment tax status of students attending an apprenticeship training school established pursuant to an

agreement between a union and a contractors association. The training program is administered by a trust fund which is financed by employer contributions of a fixed amount per hour worked by union journeymen and apprentices. The students are not charged tuition for attending the Training Program and are paid by the trust at an hourly rate during training.

There are two classifications of students described in the ruling. The first are pre-apprentices who are not employed by any contractor and may never become apprenticed to a contractor if they fail to complete six to eight weeks of pre-apprentice training. As to these individuals, the ruling concludes that they are not employees, and therefore, no liability for employment taxes is incurred with respect to the payments or allowances they receive.

The second group of students are apprentices who are employed by contractors throughout the training period. These individuals attend the program one day each week during the school's regular session. While in training, they are paid by the trust fund at the same hourly rate that they are paid by the contractor-employers. The ruling concludes that the apprentices' one day a week absence from work does not affect their employment relationship with the contractors and therefore the amounts paid to them from the trust are 'wages' for the purposes of FICA, FUTA and income tax withholding. The ruling also concludes that the payments from the trust fund are includible in the gross incomes of the apprentices and the pre-apprentices under [section 61](#) of the Code. Section 6041 of the Code provides that persons engaged in a trade or business and making payments in the course of that trade or business to another person of wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year must file an information return under regulations and in the form and manner prescribed by the Secretary of the Treasury.

Section 1.6041-1(b) provides that the term 'all persons engaged in a trade or business' as used in section 6041 of the Code includes organizations referred to in [section 501\(c\)](#). After careful consideration of the facts in this case and of the above cited authorities, we conclude that the stipends paid by the Trust are includible in the gross incomes of the recipient apprentices under [section 61](#) of the Code.

In the present case the relationship of the Trust, the union and the contractors, regarding the exercise of control over the selection of the recipients of the stipends and the course of training which they must pursue is similar to that considered in [Rev. Rul. 77-177](#). Consequently, the requirements of section 117(b)(2) of the Code, concerning the exclusion for scholarships to individuals who are not candidates for degrees are not satisfied. We believe the stipends intended to defray living expenses are within the category of payments for meals, lodging, and transportation, which are explicitly disallowed as excludable educational assistance payments under section 127(c)(1) of the Code.

We also conclude that the stipends paid to the apprentices in this case are not 'wages' for purposes of FICA, FUTA, and income tax withholding since there are controlling distinctions between the present situation and that described in [Rev. Rul. 69-519](#). Unlike [Rev. Rul. 69-519](#), an apprentice who reports for training in the present case is not placed on leave of absence. Instead, the employment relationship is terminated and the apprentice is not assured of future employment with that contractor. Such termination is provided by the collective bargaining agreements, which state that an apprentice will not be paid wages while in training and the time spent at school is not considered as work for a contractor. In addition, stipends paid while an apprentice is in training are fixed by the Trust's board of trustees, and are not related to the apprentice's hourly wage rate.

The apprentices are indentured to the JAC's instead of a contractor, and the JAC determines when an apprentice must report for training. The apprentices can not refuse or defer training in order to remain on a present job. After training, the JAC is responsible for the apprentice's reentry into employment with a contractor.

Accordingly, we conclude that the apprentices are not employees for federal employment tax purposes while attending school in the Training Program and the stipends paid to

them from the Trust are not wages for FICA, FUTA, and income tax withholding purposes. However, the stipends are includible in the gross incomes of the recipient apprentices and must be reported by the Trust on Forms 1099-MISC, Statements for Recipients of Miscellaneous Income.

This ruling is directed only to you. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#) provides that it may not be used or cited as precedent.

In accordance with the power of attorney submitted, a copy of this letter will be sent to your authorized representative.

Sincerely yours,

Richard H. Manfreda  
Chief  
Individual Income Tax Branch

This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

END OF DOCUMENT